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ABDUL MANAN HASSAN v. HASSAN MARSOM & ORS

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
ABDUL RAHMAN SEBLI JCA
ZALEHA YUSOF JCA
B [CIVIL APPEAL NO: M-01(NCVC)(W)-140-05-2015]
27 SEPTEMBER 2017

CRIMINAL PROCEDURE: *Trial – Conduct of proceedings – False imprisonment – Liability of – Two suits for false imprisonment brought against respondents – Agreement between parties that decision of earlier suit would bind court on issue of liability for false imprisonment – Earlier suit found respondents guilty of false imprisonment – Whether respondents estopped from denying liability for wrongful detention – Whether parties bound by agreement*

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TORT: *False imprisonment – Liability of – Trial – Two suits for false imprisonment brought against respondents – Agreement between parties that decision of earlier suit would bind court on issue of liability for false imprisonment – Earlier suit found respondents guilty of false imprisonment – Whether respondents estopped from denying liability for wrongful detention – Whether parties bound by agreement*

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The appellant and one Mohd Hady were arrested and brought to the Melaka Police Headquarters to assist in police investigation into a fight that took place at Zubaidah Restaurant on 21 November 2008. The appellant was suspected to be involved in the fight. Thereafter, the appellant and Mohd Hady were remanded in police custody for a total period of 14 days on the order of a Magistrate. Subsequently, they brought separate civil suits against the respondents for assault and false imprisonment. The appellant alleged that after his arrest, he was blindfolded and subjected to violent physical assault by ten policemen resulting in serious injuries to him, which could result in death if left untreated. Before the commencement of the trial between the appellant and the respondents, it was agreed between them that the decision of the High Court in the Mohd Hady suit would bind them on the issue of liability of false imprisonment. At the conclusion of the trial of the suit brought by Mohd Hady, the trial judge allowed his claim for assault but disallowed his claim for false imprisonment. On appeal however, the High Court's decision was overturned and Mohd Hady's appeal for false imprisonment was allowed and the judgment for assault was maintained. Given the agreement by the parties, the court's decision in the Mohd Hady appeal should bind the respondents on the issue of liability for false imprisonment in the suit brought by the appellant. The judge, however, did not allow the appellant's claim for false imprisonment and only allowed the

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appellant's claim for assault and awarded general damages. The basis for the reasoning was that since the remand order was issued by a Magistrate, any police officer acting in obedience to such order was immune from liability for the appellant's detention. It was against this decision that the appellant filed the present appeal herein.

Held (allowing appellant's appeal)
Per Abdul Rahman Sebli JCA delivering the judgment of the court:

(1) The parties had agreed on the issue of liability for false imprisonment and the decision was binding. The judge was wrong in disallowing the appellant's claim for damages for false imprisonment. Having agreed to be bound by the court's decision on liability in the Mohd Hady suit, the respondents were estopped from denying liability for the wrongful detention of the appellant. Thus, although the judge was not bound by the decision of this court in the Mohd Hady case on the issue of liability for false imprisonment, the parties were bound by the agreement between themselves. (para 15)

(2) The respondents could not approbate and reprobate, nor could they choose to accept the court's decision only if it favoured them. That would be an abuse of process. Their agreement to be bound by the court's decision on liability for false imprisonment in the Mohd Hady case must override and supersede their pleaded defence that the appellant's detention was lawful, unless it could be shown that the agreement was repugnant to any law, which they failed to do. (para 16)

(3) Since the respondents in the Mohd Hady suit had been found to be liable for false imprisonment by this court, it must follow that the respondents were also liable to the appellant for false imprisonment. They agreed to be bound by the decision and they must abide by it. (para 17)

Bahasa Malaysia *Headnotes*

Perayu dan seorang yang bernama Mohd Hady ditahan dan dibawa ke Ibu Pejabat Polis Melaka bagi membantu siasatan pihak polis berkenaan pergaduhan yang berlaku di Restoran Zubaidah pada 21 November 2008. Perayu disyaki terlibat dalam pergaduhan itu. Seterusnya, perayu dan Mohd Hady direman dalam tahanan polis untuk tempoh 14 hari atas arahan Majistret. Kemudiannya, mereka memulakan guaman sivil berasingan terhadap responden-responden untuk serangan dan penahanan salah. Perayu mendakwa bahawa selepas dia ditahan, dia telah ditutupkan mata dan tertakluk kepada keganasan fizikal oleh sepuluh pegawai polis mengakibatkan dia mengalami kecederaan serius, yang boleh membawa kepada kematian jika tidak dirawat. Sebelum permulaan perbicaraan antara perayu dan responden-responden, adalah dipersetujui antara mereka bahawa

keputusan Mahkamah Tinggi dalam guaman Mohd Hady akan mengikat mereka atas isu liabiliti penahanan salah. Pada akhir perbicaraan guaman sivil yang dibawa oleh Mohd Hady, hakim bicara membenarkan tuntutan serangan tetapi tidak membenarkan tuntutan penahanan salah. Atas rayuan, walau bagaimanapun, keputusan Mahkamah Tinggi diakas dan rayuan Mohd Hady untuk penahanan salah dibenarkan dan penghakiman untuk serangan dikekalkan. Memandangkan perjanjian telah dibuat antara pihak-pihak, keputusan mahkamah ini dalam rayuan Mohd Hady harus mengikat responden-responden berkenaan isu liabiliti penahanan salah dalam guaman yang dibawa oleh perayu. Hakim, walau bagaimanapun, tidak membenarkan tuntutan perayu untuk penahanan salah dan hanya membenarkan tuntutan perayu untuk serangan dan mengawardkan ganti rugi am. Dasar untuk alasan itu adalah oleh kerana perintah reman dikeluarkan oleh Majistret, pegawai polis yang berpatuhan kepada perintah sedemikian adalah imun daripada liabiliti penahanan perayu. Perayu memfailkan rayuan ini terhadap keputusan tersebut.

Diputuskan (membenarkan rayuan perayu)

Oleh Abdul Rahman Sebli HMR menyampaikan penghakiman mahkamah:

(1) Pihak-pihak telah bersetuju berkenaan isu liabiliti penahanan salah dan keputusan adalah mengikat. Hakim terkhilaf apabila tidak membenarkan tuntutan perayu untuk ganti rugi penahanan salah. Setelah dipersetujui untuk diikat oleh keputusan mahkamah berkenaan liabiliti guaman Mohd Hady, responden-responden diestop daripada menafikan liabiliti untuk penahanan salah perayu. Dengan itu, walaupun hakim tidak terikat oleh keputusan mahkamah ini dalam kes Mohd Hady berkenaan isu liabiliti penahanan salah, pihak-pihak diikat oleh persetujuan antara mereka.

(2) Responden-responden tidak boleh aprobat dan reprobat, dan mereka tidak boleh pilih untuk menerima keputusan mahkamah hanya apabila ia memihak kepada mereka. Itu adalah satu penyalahgunaan proses. Persetujuan mereka untuk diikat dengan keputusan mahkamah berkenaan liabiliti penahanan salah dalam kes Mohd Hady harus mengatasi dan menggantikan pembelaan yang diplidkan bahawa penahanan perayu adalah mengikut undang-undang, kecuali jika ia boleh dibuktikan bahawa persetujuan tersebut adalah bertentangan dengan mana-mana undang-undang, dan mereka gagal berbuat demikian.

(3) Oleh kerana responden-responden dalam guaman Mohd Hady didapati bertanggungjawab untuk penahanan salah oleh mahkamah ini, harus diikuti bahawa responden-responden adalah bertanggungjawab kepada perayu untuk penahanan salah. Mereka bersetuju untuk terikat dengan keputusan itu dan mereka harus mematuhinya.

Case(s) referred to:

Ketua Polis Daerah Johor Bahru, Johor & Ors v. Ngui Tek Choi [2013] 4 CLJ 47 CA ***(refd)***

Tan Geok Lan v. La Kuan [2004] 2 CLJ 301 FC ***(refd)***

For the appellant - J Amardas; M/s KP Ng & Amardas

For the respondents - Teh Li Siew; SFC, Yusliza Awal, State Legal Advisor's, Melaka

[Editor's note: Appeal from High Court, Melaka; Civil Suit No: 21 NCVC-6-11-2011 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Rahman Sebli JCA:

[1] This appeal by the appellant was confined to the issue of liability for false imprisonment. The relevant facts are as follows. In the early hours of 22 November 2008, the appellant and one Mohd Hady were arrested and brought to the Melaka Police Headquarters to assist in police investigation into a fight that took place at Zubaidah Restaurant, MITC Melaka on 21 November 2008 at about 11.45pm.

[2] The fight was between some members of the public and a policeman. The appellant was suspected to be involved in the fight. The information that the police had on the appellant was that he was the gang leader of a secret society code-named "Geng 77".

[3] Thereafter, the appellant and Mohd Hady were remanded in police custody for a total period of 14 days on the order of a Magistrate. Subsequently, they brought separate civil suits against the respondents for assault and false imprisonment.

[4] The appellant alleged that after his arrest, he was blindfolded and subjected to violent physical assault by ten policemen in civilian clothes on the night of 21 November 2008 and in the morning of 22 November 2008, resulting in serious injuries to him. He was in handcuffs when they assaulted him.

[5] Medical evidence showed that the appellant suffered from 'bilateral periorbital haematoma with right subconjunctival haemorrhage' and 'acute renal failure secondary to rhabdomyolysis'. An expert medical witness who was called to give evidence at the trial testified that the injuries could result in death if left untreated. That was how serious the injuries were.

[6] Before the commencement of the trial between the appellant and the respondents, it was agreed between them that the decision of the High Court in the Mohd Hady suit, which was heard first, would bind them on the issue of liability for false imprisonment. This is recorded at pp. 31-32 of the supplementary appeal record dated 28 November 2014, which we now reproduce for ease of reference:

P. Plaintif: Kedua-dua pihak ingin memaklumkan Mahkamah bahawa pada 18.9.2013, kedua-dua pihak telah bersetuju bahawa liabiliti dalam kes Mohd Hady, 21NCVC-5-11-2011 di Mahkamah Tinggi Melaka dan Mahkamah Rayuan, M01 (NCVC) (W)-17-01-2014) akan mengikat liabiliti dalam kes ini.

Berdasarkan persetujuan awal, kedua-dua pihak ingin memaklumkan bahawa kita akan teruskan kes Manan hanya berhubung dengan kuantum tetapi rakan bijaksana, Peguam Persekutuan akan memelihara haknya berhubung dengan liabiliti, false imprisonment (pemenjaraan salah) di mana mereka akan membuat rayuan kepada Mahkamah Persekutuan.

Kedua-dua pihak akan terikat dengan keputusan Mahkamah Persekutuan sekiranya kebenaran diberi akan terikat, jika tidak diberi, keputusan Mahkamah Rayuan akan mengikat kedua-dua pihak.

Mahkamah: Jika kebenaran diberikan dan keputusan rayuan dibuat.

P. Plaintif: Oleh itu kami akan menumpukan keterangan berdasarkan hanya kuantum sahaja. Yang penting juga, pihak-pihak diberikan kebenaran untuk apply to the Court of Appeal kerana bergantung kepada keputusan Mahkamah Persekutuan.

SFC: Sahkan.

[7] At the conclusion of the trial of the suit brought by Mohd Hady, the learned trial judge allowed his claim for assault but disallowed his claim for false imprisonment. On appeal however, this court overturned the High Court's decision and allowed Mohd Hady's appeal for false imprisonment and maintained the judgment for assault.

[8] This is the decision of this court that is under appeal to the Federal Court and which the parties agreed (para. 6 above) they would abide by whichever way the Federal Court were to decide on the issue of false imprisonment. Given this agreement by the parties, and pending the decision of the Federal Court, this court's decision in the Mohd Hady appeal should bind the respondents on the issue of liability for false imprisonment in the suit brought by the appellant.

[9] The learned judge however did not allow the appellant's claim for false imprisonment. He only allowed the appellant's claim for assault and awarded general damages in the sum of RM80,000, in addition to RM50,000 for aggravated damages and another RM50,000 for exemplary damages, making a grand total of RM180,000.

[10] The learned judge gave the following reasons for not awarding damages to the appellant for false imprisonment:

> 6. Bagaimanapun saya tidak akan memberikan apa-apa award untuk penahanan dan penangkapan yang didakwa salah kerana saya dapati dan memutuskan bahawa penangkapan dan penahanan Plaintif oleh pihak polis adalah sah dan mematuhi kehendak undang-undang. Disinilah perbezaanya dengan kes Mohd Hady kerana di sini saya dapati Plaintif sememangnya telah dipanggil untuk tujuan disiasat penglibatannya dalam satu pergaduhan di Restoran Zubaidah, MITC Melaka. Manakala Mohd Hady pula didapati sekadar mengikuti Plaintif sahaja. Namun begitu, saya telah memutuskan Mohd Hady masih tidak layak untuk mendapat pengisytiharan dan tuntutan atas dasar penahanan salah yang didakwanya.

[11] The basis for the reasoning was that since the remand order was issued by a Magistrate, any police officer acting in obedience to such order was immune from liability for the appellant's detention, citing the decision of this court in *Ketua Polis Daerah Johor Bahru, Johor & Ors v. Ngui Tek Choi* [2013] 4 CLJ 47.

[12] The learned judge was aware that his decision to disallow Mohd Hady's claim for false imprisonment was reversed by this court, but distinguished the facts from the facts of the appellant's case. We reproduce below what the learned judge said:

> 7. Walaupun saya difahamkan keputusan saya berkenaan penahanan salah dalam kes Mohd Hady telah diketepikan oleh Mahkamah Rayuan, saya masih berpendapat bahawa kedudukan Mohd Hady jauh berbeza dengan kes Plaintif di sini. Dengan itu, saya memutuskan Plaintif tidak layak diberikan apa-apa pampasan ganti rugi bagi penahanan tersebut.

[13] It was against this decision that the appellant filed the present appeal before us. After hearing arguments by both sides, we unanimously allowed the appellant's appeal and set aside the High Court's decision. These briefly are our grounds for allowing the appeal.

[14] The appellant's contention was that the learned judge was wrong in disallowing his claim for false imprisonment as parties had agreed on the issue of liability for false imprisonment. Reliance was placed on the Federal Court case of *Tan Geok Lan v. La Kuan* [2004] 2 CLJ 301; [2004] 3 MLJ 465 where it was held at p. 313 (CLJ); p. 474 (MLJ):

> With due respect, we do not agree because to our mind, **if the parties had chosen and agreed as to the manner of resolving the dispute between them they will have to bear with whatever is the outcome**. The threshold question is whether there was a binding agreement between the parties to settle the dispute in that manner? For the answer to this question, the learned trial judge will have to conduct the proceedings as aforesaid. And if the agreement is found to be binding, the dispute can be solved in the manner as agreed to by the parties and the case can be disposed of expeditiously; thus, saving time and costs. (emphasis added)

A **[15]** This decision binds us. We were therefore constrained to agree with learned counsel for the appellant that the learned judge was wrong in disallowing the appellant's claim for damages for false imprisonment. Having agreed to be bound by the court's decision on liability in the Mohd Hady suit, the respondents are estopped from denying liability for the wrongful B detention of the appellant. Thus, although the learned judge was not bound by the decision of this court in the Mohd Hady case on the issue of liability for false imprisonment, the parties are bound by the agreement between themselves.

[16] The respondents cannot approbate and reprobate, nor can they choose C to accept the court's decision only if it favoured them. That will be an abuse of process. Their agreement to be bound by the court's decision on liability for false imprisonment in the Mohd Hady case must override and supersede their pleaded defence that the appellant's detention was lawful, unless it could be shown that the agreement was repugnant to any law, which they D failed to do.

[17] Since the respondents in the Mohd Hady suit had been found to be liable for false imprisonment by this court, it must follow, until the decision is reversed by the Federal Court, that the respondents are also liable to the appellant for false imprisonment. They agreed to be bound by the decision E and they must abide by it.

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